FIFTH SECTION

CASE OF BREUKHOVEN v. THE CZECH REPUBLIC

(Application no. 44438/06)

JUDGMENT

STRASBOURG

21 July 2011

FINAL

21/10/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Breukhoven v. the Czech Republic,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Dean Spielmann, *President,*
Elisabet Fura,
Karel Jungwiert,
Boštjan M. Zupančič,
Mark Villiger,
Ganna Yudkivska,
Angelika Nußberger, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 28 June 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 44438/06) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Dutch national, Mr Johan Breukhoven ("the applicant"), on 24 October 2006.

2. The applicant was represented by Mr L. Petříček, a lawyer practising in Prague. The Czech Government ("the Government") were represented by their Agent, Mr V. A. Schorm, of the Ministry of Justice.

3. The applicant alleged, in particular, a violation of his right to cross-examine witnesses under Article 6 § 1 and 3 (d) of the Convention.

4. On 15 March 2010 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). On 17 March 2010 he decided to give notice of the application to the Government of the Netherlands in order to enable them to exercise their right to intervene in the proceedings (Article 36 § 1 and Rule 44). On 30 June 2010 the Government of the Netherlands informed the Court that it did not wish to exercise their right to intervene.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1952 and currently lives in Valcea, Romania.

6. The applicant was the owner of a night club in Dolní Dvořiště, Czech Republic. On an unspecified date the police started investigating the club, on the suspicion that women working there were being forced to prostitute themselves. On an unspecified date the applicant left the Czech Republic. His whereabouts were unknown to the Czech authorities.

7. During the initial stage of the investigation five women, all Romanian nationals who worked in the club, were questioned. The interviews were conducted in the presence of a judge under Article 158a of the Code of Criminal

Procedure as an urgent measure (*neodkladný úkon*) because the women said that they wished to return to Romania and never come back to the Czech Republic. Under the same procedure, two customers of the club were also questioned. Neither the applicant nor his lawyer were present at these interviews and the applicant did not even know about them as they were carried out before he was charged.

8. Witnesses F.D., N.D and V.D. testified that the applicant had met them in Romania and had lured them to the Czech Republic with the promise of work as bartenders or cleaning ladies. However, after their arrival, he had forced them to prostitute themselves under the threat of killing their families. The applicant had also taken their passports so that they would not be able to leave. They had had to give the applicant one half of the money they earned from their customers.

9. Witnesses D.C.C. and A.T.V. testified that they had worked as prostitutes in the club voluntarily and that they had been required to give the applicant one half of what they earned from their customers.

10. On 25 February 2005 a judge of the Český Krumlov District Court (*okresní soud*) ordered a search of the club, which the police carried out on the same day.

11. On 3 May 2005 the applicant was charged with trafficking in human beings and procuring prostitution.

12. The applicant was represented by a lawyer of his own choosing until 31 August 2005, when the latter stopped representing him because he had not paid his fees. On 7 September 2005 the České Budějovice District Court appointed a lawyer to represent the applicant in the proceedings. He defended the applicant until 19 April 2007, when the judgment in his case became final. Subsequently the applicant was represented by another lawyer in the proceedings before the Supreme Court (*Nejvyšší soud*) and the Constitutional Court (*Ústavní soud*).

13. On 27 September 2005 a sixth witness, a certain I.M., was interviewed by the police. She testified that in Romania she had been promised by the applicant's wife that she would work in a kitchen in the Czech Republic. When she arrived at the applicant's club, however, she was told that she would work as a prostitute, which she agreed to do as she was afraid of the applicant. She further testified that there were other prostitutes at the club, namely F.D., N.D. and a certain M. at that time. She did not elaborate any further, however, as to how these girls had arrived at the club or whether they were there voluntarily or not. Neither did she know whether other girls had been threatened by the applicant. She further described the situation in the club: the customers paid the applicant directly who then gave money to the girls working there; the girls could leave the premises but had to stay in town; and their passports had been taken away from them. The applicant's lawyer was present at the interview but did not ask any questions.

14. After the applicant was arrested in Bulgaria and extradited to the Czech Republic, the District Court ordered his pre-trial detention on 31 January 2006. On 17 October 2006 the České Budějovice Regional Court (*krajský soud*) extended the applicant's pre-trial detention because of a danger of his absconding. The applicant was heard in person on this occasion but in his lawyer's absence, the latter being on holiday.

15. During his pre-trial detention, the applicant was allegedly held in deplorable conditions: the cell that he shared with another prisoner measured only five square metres; there was a bright light on in the cell for twenty-four hours a day; he was

not allowed to speak with other prisoners; he could not work; he had only one hour per day of outdoor exercise and during the rest of the day he could not take part in any other activities and could only sit in his cell.

16. The applicant was tried at the Regional Court and seven witnesses were heard during the trial.

L.K. testified that he had leased a flat and an office in Dolní Dvořiště to the applicant.

J.B. stated that he had been a taxi driver and in 2003, on the applicant's request, he had picked up a girl at Prague Airport and had brought her to the club.

L.B. testified that the applicant had been the owner of the night club where he had had girls of Romanian or Hungarian origin. According to him, the applicant had also had some girls in another night club in Dolní Dvořiště.

S.M. said that he was the husband of I.M., who had worked as a prostitute in the club. His wife had had some problems with the applicant and had wished to leave the club. However, she did not have her passport like the other girls in the club. She had nevertheless left the club and only when she had threatened the applicant that she would inform the police had he returned her passport to her. He also said that his wife had only come to the club because the applicant's wife had allegedly promised her that she would work in the club as a cleaning lady.

K.W. gave evidence that the applicant had rented the building in which the club had been. He believed that prostitutes had been working in the club.

A.Š. said that she had been the caretaker of the building in which the club had been. Several girls had been living in the building. She had never been in the club in the evening but she thought that the girls had worked as prostitutes.

Lastly, W.E. stated that the applicant had owned the club where he had had some girls. He said that it had been a night club and in these places prostitution usually took place.

17. The court also heard the applicant, who testified as follows:

"He admitted that he ran the club HOT CAT in Dolní Dvořiště. ... All the girls living in the club ... stayed there entirely voluntarily. ... They could move freely and leave the club whenever they wanted. ... They worked as companions, dancers and strippers. For that they received a commission. Besides that, they could go with the guests to a room where they could sit, even naked, for example. That had to be paid for by the customer. The price was set by the girls. The company then charged fifty euros for one hour and thirty euros for half an hour.

The building was locked for security reasons. All the girls had a key and they could leave at any time. ... He did absolutely not lure anybody to the club under a false pretext or force anybody to have sex. Nor did he take their passports. The girls even had to sign an oath in which they were expressly forbidden to prostitute themselves. To the extent that the passports were stored behind the bar, that was similar to any other hotel in the Czech Republic."

18. The Regional Court further read out several documents, including a police report on the search of the club of 25 February 2005. During the search signed declarations of all the women working in the club had been found, in which they had pledged not to prostitute themselves.

19. Another report by the policemen who had conducted an inspection of the club on 22 February 2005 was also read out at court. It stated that when the police had approached the club in the evening it had been locked, but a certain R.G. had opened the door. When they had sought to check the identity of all those who had been present, the applicant had unlocked a drawer behind the bar where he had kept the passports of all the prostitutes.

20. The court further read out the testimony of the six women working at the club as prostitutes and their two customers that had been taken at the pre-trial stage. It refused the applicant's request to summon the women to court on the grounds that it was unnecessary, holding that their testimonies had been taken in full compliance with the law as an urgent measure and thus, in accordance with the Code of Criminal Procedure, they could be read out at the trial without reservation. The applicant was allowed to comment on these testimonies.

21. The court found that the applicant had run a club where prostitution had taken place. Based on the statements of witnesses F.D., N.D. and V.D., it found that they had been lured to the Czech Republic under the pretext of working as bartenders but when they had arrived, the applicant had taken their passports and forced them to prostitute themselves under threats of violence against their families, and that he had benefited from the prostitution. Based on the witness statements of I.M., D.C.C. and A.T.V., the applicant's own testimony and his bank account statement, the court held that he had benefited from the prostitution of these three girls.

22. In the light of these conclusions, the court found the applicant guilty of the crime of trafficking in human beings as regards F.D. and N.D. under Article 246 (2)(d) of the Criminal Code and of trafficking in human beings as regards V.D. under Article 232a(3)(d) of the Criminal Code and of the crime of procuring prostitution as regards I.M., D.C.C. and A.T.V. and benefiting from it under Article 204(1) of the Criminal Code. The court sentenced him to five and a half years' imprisonment. The sentence was calculated solely on the basis of the crime of trafficking in human beings, which attracted the higher sentence between these two crimes.

23. The applicant appealed, arguing, *inter alia*, that he had been found guilty exclusively on the basis of the testimony of witnesses who had not appeared at the trial and whom he had never had an opportunity to question.

24. On 19 April 2007 the Prague High Court (*Vrchní soud*) dismissed the applicant's appeal. It held, *inter alia*, that the testimonies of the witnesses who had not appeared in person had been read out at the trial in compliance with the law and that the Regional Court had not based its decision solely on these testimonies, holding that:

"... during the pre-trial investigation, and in particular in the proceedings before the court, a number of other pieces of evidence were adduced, in particular witness testimonies, to which the Regional Court referred and which confirmed that the situation in the club was the same as that described by witnesses questioned under Article 158a of the Code of Criminal Procedure. Therefore it is not true that the Regional Court found the defendant guilty solely on the basis of evidence adduced in the way suggested above."[1]

25. On 10 July 2007 the applicant lodged an appeal on points of law (*dovolání*). He argued that the case should have been decided by a Romanian court, that he

should have had a lawyer with knowledge of Romanian law, that he had not been allowed to be represented by a lawyer of his own choosing and that he had not been given the opportunity to examine witnesses against him.

26. On 29 November 2007 the Supreme Court dismissed the applicant's appeal on points of law, stating that the applicant's conduct had occurred mostly within the territory of the Czech Republic and that therefore the Czech courts had jurisdiction over it. He had been legally represented throughout the whole proceedings by his appointed lawyer and at no point had he tried to choose another lawyer. There was no need for a lawyer with knowledge of Romanian law. Regarding the last complaint, the court held that the testimonies of the witnesses who had not appeared in person had been read out at the trial in accordance with the law and that they had not been the only evidence on which the applicant's guilt had been determined.

27. Since 2007 the applicant has sent several letters and complaints to the Ministry of Justice asking the Minister to lodge a complaint on his behalf, alleging a breach of the law (*stížnost pro porušení zákona*). On 20 February 2009 the Ministry of Justice informed him that there was no reason to lodge such a complaint.

28. On 29 April 2008 the applicant lodged a constitutional appeal (*ústavní stížnost*). He argued, with references to the Convention and the Court's case-law, that he had not been able to cross-examine the witnesses against him and that the only purported proof of the crimes of which he was found guilty was the testimony given by those same witnesses. He also argued that there had been no reason not to summon the witnesses as their addresses had been known. Furthermore, he argued that the Czech courts had had no jurisdiction to hear the case because it should have been decided by the Romanian courts. He further complained that he should have been assigned a lawyer who had some knowledge of Romanian law and that as a result his right to an effective defence had been violated. Lastly, he complained that the search of his club had been conducted without a warrant, which had violated his right to privacy.

29. On 26 June 2008 the Constitutional Court rejected the applicant's constitutional appeal as manifestly ill-founded. It held that his conviction had not been based solely on the testimony of the witnesses whom he had not been able to examine, referring mainly to the testimony of S.M; that it was not possible to determine the whereabouts of the witnesses; and that the positive obligations of the State to protect the rights of victims of trafficking in human beings had to be taken into account. The court considered the rest of the applicant's complaints to be manifestly ill-founded and agreed with the findings of the ordinary courts.

II. RELEVANT DOMESTIC LAW

A. Code of Criminal Procedure (Act no. 141/1961)

30. Under Article 158a, if it is necessary to question a witness as an urgent or unrepeatable measure during an investigation at a time before anybody has been charged, such an interview can be conducted on the request of a prosecutor and in the presence of a judge.

31. Article 211 § 2 provides that the statement of a witness given during pre-trial proceedings may be read out at the trial if the witness

a) has died or gone missing, is staying abroad and is thus unreachable, or has become ill and is not, therefore, in a position to be heard, or

b) has been questioned as an urgent or unrepeatable measure under Article 158a.

B. Criminal Code in force at the material time (Act no. 140/1961)

32. Under Article 204 § 1, a person who procured or seduced another for the purpose of involving that person in prostitution, or who exploited the prostitution of another person, had to be sentenced to a term of imprisonment of up to three years.

33. Article 246, in force until 22 October 2004, contained a crime of human trafficking for the purpose of sexual intercourse:

"(1) Whoever lures, hires or transports a person from or to a foreign country with the intent of using him or her for sexual intercourse shall be sentenced to a term of imprisonment of between one and five years.

(2) An offender shall be sentenced to a term of imprisonment of between three and eight years if

...

(d) he or she commits such an act with the intent of having another person used for prostitution."

34. With effect from 23 October 2004, Article 246 was repealed and a new Article 232a on Trade in Human Beings introduced:

"...

(2) [A term of imprisonment of between two and ten years] shall be imposed on a person who induces, procures, hires, lures, transports, hides, retains or exposes another person by the use of violence, the threat of violence or by deception or by taking advantage of another's mistaken belief, distress or dependence, with the purpose of using such a person:

a) for sexual intercourse or other forms of sexual harassment or abuse;

b) for slavery or servitude, or;

c) for forced labour or other forms of exploitation.

(3) An offender shall be sentenced to a term of imprisonment of between five and twelve years if

...

(d) he or she commits [an act under paragraph 2] with the intent of having another person used for prostitution."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 3 (d) OF THE CONVENTION

35. The applicant complained that he had not been able to cross-examine several witnesses against him as guaranteed under Article 6 § 3 (d) of the Convention. The relevant parts of Article 6 §§ 1 and 3 (d) provide as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal...

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ...”

36. The Government contested that argument.

A. Admissibility

37. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Arguments of the parties

38. The applicant considered that his right to a fair trial had been breached because he had been convicted solely on the testimony of the witnesses whom he had had no opportunity to question at any stage of the proceedings.

39. The Government admitted that the applicant could not have questioned witnesses F.D., N.D., V.D., D.C.C. and A.T.V. at any stage of the proceedings but maintained that his guilt had been proved by other evidence. It could not therefore be said that his conviction had been based solely or to a decisive extent on these witnesses’ statements. In that connection, they referred to the judgment of the High Court that had cited a number of other pieces of evidence that had been adduced and relied on, in particular the witness testimonies which had corroborated the account given by the witnesses questioned under Article 158a of the Code of Criminal Procedure as regards the situation in the club. The Government also referred to the decision of the Constitutional Court that had made reference to several other witnesses who had testified that the applicant had run a brothel.

40. The Government further stated that the content of the testimonies of F.D., N.D., V.D., D.C.C. and A.T.V. had been confirmed by the statement of I.M. and later by S.M. Moreover, a number of other witnesses had given their statements at the trial and the Regional Court had read out the documents adduced before it.

41. Lastly, the Government maintained that in assessing whether the applicant’s right to a fair trial had been observed it was also necessary to take into account the public interest in penalising the very serious offence with which he had been charged and the significant interference with the victims’ human rights and fundamental freedoms resulting from his criminal activity.

2. The Court’s assessment

42. The Court reiterates that as the guarantees of Article 6 § 3 (d) are specific aspects of the right to a fair trial set forth in the first paragraph of that Article, the

complaint must be examined under the two provisions taken together (see, among many other authorities, *Bonev v. Bulgaria*, no. 60018/00, § 40, 8 June 2006).

43. Under the Court's established case-law all the evidence must normally be produced at a public hearing, in the presence of the accused, with a view to adversarial argument. There are exceptions to this principle, but they must not infringe the rights of the defence; as a general rule, paragraphs 1 and 3 (d) of Article 6 require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him, either when he makes his statements or at a later stage. In particular, the rights of the defence are restricted to an extent that is incompatible with the requirements of Article 6 if the conviction is based solely, or in a decisive manner, on the depositions of a witness whom the accused has had no opportunity to examine or to have examined either during the investigation or at trial (see *A.M. v. Italy*, no. 37019/97, § 25, ECHR 1999-IX).

44. Article 6 § 1 taken together with 6 § 3 also requires the Contracting States to take positive steps to enable the accused to examine or have examined witnesses against him (see *Sadak and Others v. Turkey*, nos. 29900/96, 29901/96, 29902/96 and 29903/96, § 67, ECHR 2001-VIII). In the event that the impossibility to examine the witnesses or have them examined is due to the fact that they are missing, the authorities must make a reasonable effort to secure their presence (see *Bonev v. Bulgaria*, no. 60018/00, § 43, 8 June 2006).

45. The Court has also acknowledged that criminal proceedings concerning sexual offences are often perceived as an ordeal by the victim, in particular when the latter is unwillingly confronted with the defendant. In the assessment of whether or not in such proceedings an accused received a fair trial, account must be taken of the right to respect for the private life of the alleged victim. Therefore, the Court accepts that in criminal proceedings concerning sexual abuse, certain measures may be taken for the purpose of protecting the victim, provided that such measures can be reconciled with an adequate and effective exercise of the rights of the defence. In securing the rights of the defence, the judicial authorities may be required to take measures which counterbalance the handicaps under which the defence labours (see *D. v. Finland*, no. 30542/04, § 43, 7 July 2009).

46. Turning to the present case, the Court first notes that the applicant was convicted of trafficking in human beings as regards F.D., N.D. and V.D. This criminal offence was constituted by the following elements: in the case of F.D. and N.D., their being lured from abroad for prostitution and, in the case of V.D., forcing her into prostitution by the use of violence, the threat of violence or by deception or by taking advantage of her mistaken belief, distress or dependence. The Regional Court found that these three victims had been lured from Romania under the false pretext of work as bartenders in the Czech Republic and that the applicant had subsequently forced them to prostitute themselves by threatening violence against their families.

47. The Court further notes that the applicant was only sentenced for the crime of trafficking in human beings because the crime of procuring prostitution attracted a lower sentence that was subsumed by the higher sentence for trafficking. The Court therefore limits its analysis to the applicant's conviction for trafficking. It must first determine whether the domestic courts relied on any other evidence, apart from the witness statements of the women who had been interviewed under Article 158a of the Code of Criminal Procedure before the applicant was charged

and whom he was not able to have cross-examined at any stage of the proceedings, in order to establish the applicant's guilt regarding this crime.

48. The Court observes that the Regional Court heard a number of witnesses who described the situation in the club and testified that sexual services had been offered there by women from Romania. With the exception of S.M., none of them, however, expressed any opinion as to whether the women had been forced into prostitution by threats or lured from Romania under a false pretext, which were the constituent elements of the criminal offence of trafficking found by the Regional Court in the instant case.

49. The Court also notes that the Regional Court considered the applicant's request that certain witnesses be summoned from Romania to be unnecessary and thus made no efforts in this regard. It confined itself to pointing out that under the applicable domestic law their testimonies could be read out at the trial. It did not, however, consider whether the applicant's right to a fair trial would be violated as a consequence of the domestic law's application.

50. It further notes that the High Court took the view that a number of other pieces of evidence had been adduced, in particular the witness testimonies to which the Regional Court had referred and which had confirmed the situation in the club as described by the witnesses who had not appeared at the trial. The Court observes, however, that the High Court referred to the situation in the club, which might be important for the crime of procuring prostitution but is insufficient to prove all the elements of the criminal offence of trafficking in human beings found by the Regional Court, in particular the threats allegedly made by the applicant.

51. As for S.M., who appeared at the trial, the Court observes that his testimony contained only information as to the possible trafficking of his wife, I.M. However, the applicant was not found guilty of trafficking I.M., and S.M. did not provide any specific information regarding the trafficking of F.D., N.D. or V.D. as found by the Regional Court. The Court is therefore of the opinion that it cannot be said that S.M.'s testimony constituted the basis for the applicant's conviction for the trafficking of F.D., N.D. and V.D.

52. The same conclusion applies to the testimony of I.M., who was questioned at the pre-trial stage but in the presence of the applicant's lawyer. From the transcript of her interview, it is clear that she provided no information about the trafficking of F.D., N.D. or V.D. and explicitly said that she did not know whether other women in the club had been threatened by the applicant.

53. Similarly, the Court considers that the documents read out at the trial contained only information relevant to the situation in the club and whether prostitution was carried out there but not about the particular elements of trafficking found by the Regional Court.

54. The Court thus concludes that the domestic courts based the applicant's conviction for trafficking only on the testimony of the witnesses who did not appear at the trial and whom neither the applicant nor his lawyer had the opportunity of questioning at any other stage of the proceedings.

55. Admittedly, both the Government and the Constitutional Court stressed the serious nature of the applicant's crimes which seriously interfered with the victims' human rights. They referred, in this connection, to the positive obligation of States to combat trafficking in human beings, recently confirmed by the Court

in its judgment in the case of *Rantsev v. Cyprus and Russia* (no. 25965/04, § 285, ECHR 2010-...). The Court notes, however, that the *Rantsev* judgment did not indicate that the positive obligation of States to prosecute traffickers go as far as infringing the defence rights of persons charged with trafficking.

56. The Court is mindful of the vulnerability of the victims of trafficking and does not wish to underestimate their plight. It is understandable that the victims in the present case wanted to return home to Romania as soon as possible. On the other hand, the domestic courts made no effort at all to secure their presence at the trial or to interview them in their home country (see, *a contrario*, *Scheper v. the Netherlands* (dec.), no. 39209/02, 5 April 2005, and *Berisha v. the Netherlands* (dec.), no. 42965/98, 4 May 2000, where victims of trafficking were questioned in their home country in the presence of the applicant's lawyer). The Court therefore does not consider that the domestic authorities fulfilled their obligation to take positive steps to enable the accused to examine or have examined the witnesses against him. Moreover, no measures were taken by the domestic authorities to counterbalance the handicaps under which the defence laboured (see, *a contrario, S.N. v. Sweden*, no. 34209/96, § 50, ECHR 2002-V, where the applicant's lawyer was able to put questions, at least indirectly, to a child victim of sexual abuse).

57. The Court concludes that the applicant's conviction for trafficking in human beings was based solely on the testimony of the witnesses who did not appear at trial and whom he had no opportunity to question at any time during the proceedings and that this procedural failure cannot be justified by the particular context of the present case, which is a serious crime of sexual exploitation. This is all the more true since the domestic courts made no effort to secure the attendance of the witnesses concerned at the trial or to counterbalance the handicaps under which the defence laboured.

58. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 3 (c) OF THE CONVENTION

59. The applicant complained that he had to pay the fees of the State-appointed lawyer, that he had not been informed about his right to have a lawyer of his own choosing and that his appointed lawyer had no knowledge of either Romanian law or international law. He relied on Article 6 § 3 (c) of the Convention, which provides, in its relevant part, as follows:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal...

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ..."

60. The Court reiterates that Article 6 § 3 (c) guarantees that proceedings against an accused will not take place without adequate representation for the defence, but does not give the accused the right to decide himself in what manner his defence

should be assured. The decision as to which of the two alternatives mentioned in the provision should be chosen, namely the applicant's right to defend himself in person or to be represented by a lawyer of his own choosing, or in certain circumstances one appointed by the court, depends upon the applicable legislation or rules of court. Notwithstanding, the importance of a relationship of confidence between lawyer and client, the right to choose one's own counsel cannot be considered to be absolute. It is necessarily subject to certain limitations where free legal aid is concerned and also where it is for the courts to decide whether the interests of justice require that the accused be defended by counsel appointed by them. When appointing defence counsel the national courts must certainly have regard to the defendant's wishes. However, they can override those wishes when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice (see *Mayzit v. Russia*, no. 63378/00, § 65-66, 20 January 2005).

61. The Court observes that the applicant was legally represented throughout all the domestic proceedings from the moment when he was charged. It notes that he did not at any point complain of the performance of his lawyer. The Court does not see why the applicant would need a lawyer with knowledge of Romanian law when he was tried exclusively under Czech criminal law. As regards international law, the Court observes that the applicant's lawyers submitted qualified arguments concerning the alleged violations of his rights to a fair trial under the Convention including references to the Court's case-law.

62. Furthermore, it does not seem that the applicant was at any time denied his right to choose his own lawyer and the applicant does not even make that allegation. It rather seems, as stated by the Supreme Court, that he did not choose his own lawyer and that the State, in securing his adequate defence, provided him with a lawyer. In addition, the applicant did not substantiate his claim that he lacked sufficient means to pay for his lawyer.

63. Accordingly, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

64. The applicant complained that the night club was searched without a search warrant. He relied on Article 8 of the Convention, which reads:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

65. The Court observes that the search was conducted on the basis of the search warrant issued by the judge at the District Court. Moreover, it has no reason to doubt the legality of the search on any other ground.

66. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

67. The applicant, relying on Article 5 § 1 (a) of the Convention, complained that his detention had been unlawful because the criminal proceedings against him had been unlawful. Relying on Articles 3 and 6 § 2 of the Convention, he further complained about the conditions of his detention. Lastly, relying on Article 6 § 3 (d) of the Convention, he complained that he had not been legally represented at the hearing on his pre-trial detention on 17 October 2006.

68. The Court observes that the applicant failed to raise these issues before the Constitutional Court, which thus did not review these complaints. Consequently, the Court considers that these complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

70. The applicant claimed 52,000 euros (EUR) in respect of pecuniary damage. He based his claim on the loss of profits during his allegedly illegal detention and the damage to his car that was seized for a certain period by the police. He further claimed EUR 520,000 in respect of non-pecuniary damage.

71. The Government argued that there was no causal link between a possible violation of the applicant's rights under Article 6 § 1 and 3 (d) of the Convention and the alleged pecuniary damage. As regards non-pecuniary damage, they maintained that the finding of a violation would constitute in itself sufficient just satisfaction.

72. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim (see *Krasniki v. the Czech Republic*, no. 51277/99, § 91-92, 28 February 2006).

73. Regarding non-pecuniary damage, the Court notes that in several cases where it has found similar violations as in the present case it has held that a finding of a violation constituted sufficient just satisfaction because the applicants had the possibility of requesting the reopening of the proceedings at the domestic level (see, for example, *Krasniki*, cited above, § 93; *Melich and Beck v. the Czech Republic*, no. 35450/04, § 59, 24 July 2008; *Rachdad v. France*, no. 71846/01, § 29, 13 November 2003; and *Kaste and Mathisen v. Norway*, nos. 18885/04; and 21166/04, § 61, ECHR 2006-XIII).

74. The Court notes that under the Constitutional Court Act, anyone who has been involved in domestic criminal proceedings and is successful in proceedings before an international judicial authority which finds that his or her human rights or fundamental freedoms guaranteed by an international treaty have been violated

by a public authority, may file a request for the reopening of the proceedings previously brought in the Constitutional Court.

75. Accordingly, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

B. Costs and expenses

76. The applicant also claimed EUR 4,200 for the costs and expenses incurred before the Court.

77. The Government maintained that no award should be made under this head because the applicant had not submitted any documents in support of his claims.

78. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Given the absence of any supporting documents, the Court does not award the applicant any amount under this head (see *Melich and Beck*, cited above).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning Article 6 §§ 1 and 3 (d) that he had not been able to cross-examine several witnesses admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Dean Spielmann
Registrar President

[1] Emphasis in the original.

BREUKHOVEN v. THE CZECH REPUBLIC JUDGMENT